Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

destroyed is an unwarranted assumption, since those rights cannot reasonably be shown to exist. Whether the time in each case has been sufficient to establish title by prescription is a question which must be left to the judgment tribunal.

It would seem that the doctrine should apply with peculiar force in the United States, where one state may appeal to the Supreme Court of the United States to settle its controversies with other states.[6] A recent Wisconsin case, in relying upon the doctrine in determining a question of title to property between two individuals, seems, therefore, sound. *Franzini* v. *Layland*, 97 N. E. Rep. 499.

CRIMINAL LIABILITY OF NEGLIGENT DIRECTORS. — Much judicial consideration has been given to the question of the liability for negligence in civil cases of a corporate director to the corporation or to strangers; but the decisions involving the important problem of his responsibility to the state for the consequences of his neglect are surprisingly few. The question assumes much practical importance under modern business conditions, and it has recently been forced into prominence by several lamentable accidents. The point was involved in a late New Jersey case which has aroused wide-spread public interest. *State* v. *Young*, 56 Atl. Rep. 471. Many lives having been lost in a street car accident, an indictment was framed against the directors of the company charging them with negligence in failing to provide adequate facilities for stopping the car on a slippery track. The court, finding no evidence of such negligence, directed a verdict, but stated that the duty required of directors was to provide a safe system for public travel. The basis of the criminal liability was not discussed.

Primarily, of course, it is the corporation which owes the duty to its patrons and to the state. Directors are mere agents of the corporation. The civil liability to a third person of an agent is held to depend on the distinction between non-feasance and misfeasance; for, while the duty to act affirmatively is owed only to the principal, the duty to refrain from positive misfeasance the agent owes to all the world.[1] But it would seem that the criminal responsibility of an agent ought not to involve this technical and often troublesome distinction. By the better view the negligent omission of a legal duty, to whomsoever owed, may render the negligent person liable to indictment for homicide.[2] If this position be correct, the negligent director is criminally liable whether his act be one of omission or of commission, for his duty to the corporation requires him to abstain from negligent acts of either kind.

The degree of care which may properly be required of a director varies with the nature of the corporate business. Towards the corporation it is ordinarily said to be that which a reasonably prudent man would exercise in his own business.[3] But to become indictable the negligence must be of a higher degree. It must be so gross as to be wicked; and the sounder

---

[6] U. S. Const. Art. III. Sec. 2; Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657.

[1] Bell *v.* Josselyn, 3 Gray (Mass.) 309; Van Antwerp *v.* Linton, 89 Hun (N. Y.) 417, affirmed 157 N. Y. 716.

[2] R. *v.* Pitwood, 19 T. L. R. 37. See 16 HARV. L. REV. 297.

[3] Briggs *v.* Spaulding, 141 U. S. 132.

though not the universal rule makes the standard not external, that of the average man, but internal, that of the defendant himself.[4] He must have "known better," or he is not deserving of punishment. That a railroad director was so ignorant that he did not appreciate the danger of existing conditions would, however, be insufficient to excuse him, since he would doubtless know that public safety demands careful and competent supervision of railroads, and that this supervision is part of the duty of the director. If, knowing this, he undertakes the responsibility of oversight while consciously unable to intelligently oversee, he cannot excuse himself on the ground of ignorance of the dangerous conditions. His position is analogous to that of a person who knowing his own incompetence undertakes to run a locomotive or to practise medicine.[5] The public welfare demands that those upon whom the people are so largely dependent be held to the highest legal responsibility.

THE IMMUNITY OF GOVERNMENT PROPERTY FROM ARREST. — Since the exhaustive and well-considered opinion in the case of Briggs *v.* The Light-Boats,[1] it has been well-established law that, speaking generally, no lien can be enforced against government property when the enforcement involves a disturbance of the government's possession. It may not be erroneous to say the lien exists; but where an attempt is made to enforce it, the courts meet a grave jurisdictional difficulty. To take property of the government out of its possession is a derogation of its sovereign rights. The few cases which have allowed the lien to be enforced seem to have overlooked this distinction between the existence of the lien and the enforcement of it.[2] When, however, the property sought to be arrested is not in the possession of the government, a different question arises on which the law is not so clear.

The Judicial Committee of the Privy Council has recently taken occasion to express an opinion on both these points. A ferry boat, the property of the Crown destined for service in the operation of a government railway, being disabled on the high seas, was towed into port. Their Lordships held she could not be libeled for salvage. And although they regarded the vessel as in the possession of the servants of the Crown, they expressly stated that their decision would not be affected if it were to be shown that she was in the hands of private persons. *Young* v. *Steamship Scotia*, 89 L. T. 374. It is submitted that this latter opinion is inconsistent both with authority and with principle. The property of the United States in the hands of a carrier has been subjected to a lien for freight,[3] likewise to a lien for salvage.[4] And in a much quoted opinion Mr. Justice Story held such property of the government liable to contribution for a general average loss.[5] It is probable, moreover, that such has always been the law in England.[6] There is one

---

[4] R. *v.* Wagstaffe, 10 Cox C. C. 530. *Contra*, Commonwealth *v.* Pierce, 138 Mass. 165.

[5] R. *v.* Markuss, 4 Fost. & F. 356.

[1] 11 Allen (Mass.) 157.

[2] The Revenue Cutter No. 1, 21 Law Reporter, 281 (U. S. D. C.).

[3] Union Pacific Railroad Co. *v.* U. S., 2 Wyo. 170.

[4] The Schooner Merchant, 17 Fed. Cas. 35 (U. S. D. C.); The Davis, 10 Wall. (U. S.) 15.

[5] U. S. *v.* Wilder, 3 Sumn. (U. S. C. C.) 308.

[6] See 1 Parsons, Mar. Law 324.